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Attorneys for Plaintiff and the Putative Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Charles Robbins, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

Gerber Products Company (d/b/a
Nestlé Nutrition, Nestlé Infant Nutrition,
or Nestlé Nutrition North America) and
Nurture, Inc. (d/b/a Happy Family Brands
and Happy Family Organics),

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, Charles Robbins (hereinafter “Plaintiff”), individually and on behalf
2 of all others similarly situated, by his attorneys, alleges the following upon
3 information and belief, except for those allegations pertaining to Plaintiff, which are
4 based on personal knowledge:
5

6
7 **NATURE OF THE ACTION**

8 1. This action seeks to remedy the deceptive and misleading business
9 practices of GERBER PRODUCTS COMPANY (d/b/a Nestlé Nutrition, Nestlé
10 Infant Nutrition, or Nestlé Nutrition North America) (hereinafter “Gerber”) and
11 Nurture, Inc. (d/b/a Happy Family Brands and Happy Family Organics), (hereinafter
12 “Nurture”) (Gerber and Nurture collectively as “Defendants”) with respect to the
13 marketing and sales of Defendants Gerber and HappyBABY, HappyTOT, and
14 HappyKID product lines throughout the State of California and throughout the
15 country. The Gerber and HappyBABY, HappyTOT, and HappyKID product lines
16 include the following products (hereinafter the “Products”):
17
18
19

- 20
- 21 ● Gerber Banana Sitter 2nd Foods;
 - 22 ● Gerber Sweet Potato Sitter 2nd Foods;
 - 23 ● Gerber Apple Strawberry Banana Sitter 2nd Foods;
 - 24 ● Gerber Apple Sitter 2nd Foods;
 - 25 ● Gerber Banana Blackberry Blueberry Sitter 2nd Foods;
 - 26 ● Gerber Pear Sitter 2nd Foods;
 - 27 ● Gerber Apple Banana with Oatmeal Sitter 2nd Foods;
 - 28

- Gerber Banana Apple Pear Sitter 2nd Foods;
- Gerber Butternut Squash Sitter 2nd Foods;
- Gerber Banana Orange Medley Sitter 2nd Foods;
- Gerber Apple Blueberry Pouch Sitter 2nd Foods;
- Gerber Green Bean Sitter 2nd Foods;
- Gerber Banana Pear Zucchini Pouch Toddler 12+ Months;
- Gerber Carrot Sitter 2nd Foods;
- Gerber Apple Blueberry Sitter 2nd Foods;
- Gerber Organic Banana Mango Pouch Sitter 2nd Foods;
- Gerber Fruit & Yogurt Strawberry Banana Pouch Toddler 12+ Months;
- Gerber Peach Sitter 2nd Foods;
- Gerber Banana Blueberry Pouch Toddler 12+ Months;
- Gerber Sweet Potato Turkey with Whole Grains Dinner Sitter 2nd Foods;
- Gerber Banana Supported Sitter 1st Foods;
- Gerber Organic Pear Peach Strawberry Pouch Sitter 2nd Foods;
- Gerber Pear Cinnamon with Oatmeal Sitter 2nd Foods;
- Gerber Organic Apple Blueberry Spinach Sitter 2nd Foods;
- Gerber Pea Sitter 2nd Foods;
- Gerber Apple Mango Strawberry Pouch Toddler 12+ Months;
- Gerber Pear Pineapple Sitter 2nd Foods;
- Gerber Carrot Sweet Potato Pea Sitter 2nd Foods;

- Gerber Fruit & Yogurt Very Berry Pouch Toddler 12+ Months;
- Gerber Apple Pear Peach Pouch Toddler 12+ Months;
- Gerber Sweet Potato Corn Sitter 2nd Foods;
- Gerber Apple Supported Sitter 1st Foods;
- Gerber Banana Carrot Mango Sitter 2nd Foods;
- Gerber Organic Pear Peach Strawberry, Carrot Apple Mango & Apple Blueberry Spinach Baby Food Pouch Variety Pack Sitter 2nd Foods;
- Gerber Mango Sitter 2nd Foods;
- Gerber Organic Purple Carrot Banana Acai with Cardamom Pouch Sitter 2nd Foods;
- Gerber Apricot Mixed Fruit Sitter 2nd Foods;
- Gerber Chicken and Gravy Sitter 2nd Foods;
- Gerber Organic Squash Pear Peach with Basil Pouch Sitter 2nd Foods;
- Gerber Organic Squash Apple Sweet Potato Pouch Sitter 2nd Foods;
- Gerber Sweet Potato Supported Sitter 1st Foods;
- Gerber Turkey and Gravy Sitter 2nd Foods;
- Gerber Beef with Gravy Sitter 2nd Foods;
- Gerber Fruit & Yogurt Peaches & Cream Toddler 12+ Months;
- Gerber Prune Apple Sitter 2nd Foods;
- Gerber Organic Apple Zucchini Spinach Strawberry Pouch Sitter 2nd Foods;

- Gerber Ham with Gravy Sitter 2nd Foods;
- Gerber Prune Supported Sitter 1st Foods;
- Gerber Apple Banana with Mixed Cereal Sitter 2nd Foods;
- Gerber Banana Supported Sitter 1st Foods;
- Gerber Banana Plum Grape Sitter 2nd Foods;
- Gerber Very Berry, Peaches & Cream & Strawberry Banana Fruit & Yogurt Pouches Toddler 12+ Months;
- Gerber Carrot Supported Sitter 1st Foods;
- Gerber Organic Carrot Apple Mango Pouch Sitter 2nd Foods;
- Gerber Pear Zucchini Corn Sitter 2nd Foods;
- Gerber Apple Cherry Sitter 2nd Foods;
- Gerber Apple Sweet Potato with Cinnamon Toddler 12+ Months;
- Gerber Banana Blueberry Sitter 2nd Foods;
- Gerber Apple Strawberry Banana Sitter 2nd Foods;
- Gerber Organic Banana Raspberry & Yogurt with Vanilla Pouch Toddler 12+ Months;
- Gerber Pear Supported Sitter 1st Foods;
- Gerber Apple Supported Sitter 1st Foods;
- Gerber Apple Strawberry Banana Pouch Sitter 2nd Foods;
- Gerber Carrot Supported Sitter 1st Foods;
- Gerber Apple Avocado Sitter 2nd Foods;

- Gerber Apple Zucchini Peach Sitter 2nd Foods;
- Gerber Organic Pear Spinach, Pear Mango Avocado & Apple Zucchini Spinach Strawberry Variety Pack Pouches Sitter 2nd Foods;
- Gerber Apple Spinach & Kale Sitter 2nd Foods;
- Gerber Butternut Squash Supported Sitter 1st Foods;
- Gerber Organic Mango Apple Carrot Kale, Apple Peach & Banana Mango Baby Food Variety Pack Pouches Sitter 2nd Foods;
- Gerber Apple Carrot Squash Sitter 2nd Foods;
- Gerber Apple Prune Sitter 2nd Foods;
- Gerber Peach Supported Sitter 1st Foods;
- Gerber Apple Peach Squash Sitter 2nd Foods;
- Gerber Organic Mango Peach Carrot Sweet Potato Oatmeal Pouch Toddler 12+ Months;
- Gerber Pear Carrot Pea Sitter 2nd Food;
- Gerber Banana Strawberry Beet Oatmeal Pouch Toddler 12+ Months;
- Gerber Green Bean Supported Sitter 1st Foods;
- Gerber Pear Supported Sitter 1st Foods;
- Gerber Organic Banana Mango Avocado Quinoa Vanilla Pouch Toddler 12+ Months;
- Gerber Sweet Potato Apple Pumpkin Sitter 2nd Foods;
- Gerber Sweet Potato Banana Orange Sitter 2nd Foods;

- Gerber Organic Apple Mango Raspberry Avocado Oatmeal Pouch Toddler 12+ Months;
- Gerber Pear Guava Sitter 2nd Foods;
- Gerber Sweet Potato Mango Kale Sitter 2nd Foods;
- Gerber Pear Mango Avocado Pouch Sitter 2nd Foods;
- Gerber Pumpkin Sitter 2nd Foods;
- Gerber Squash Pear Pineapple Sitter 2nd Foods;
- Gerber Apple Strawberry Rhubarb Sitter 2nd Foods;
- Gerber Organic Pear Peach Oatmeal Toddler 12+ Months;
- Gerber Pear Zucchini Sitter 2nd Foods;
- Gerber Organic Banana Acai Berry Mixed Grain Pouch Toddler 12+ Months;
- Gerber Pea Supported Sitter 1st Foods;
- Gerber Puree Favorites Variety Pack Chicken and Gravy & Turkey and Gravy Sitter 2nd Foods;
- Gerber Banana Pouch Sitter 2nd Foods;
- Gerber Pasta Marinara Advanced;
- Gerber Pear Parsnip Blueberry Sitter 2nd Foods;
- Gerber Organic Apple Purple Carrot Blueberry with Yogurt Pouch Toddler 12+ Months;
- Gerber Carrot Mango Pineapple Sitter 2nd Foods;

- Gerber Pasta Primavera Advanced;
- Gerber Strong Banana Blueberry Purple Carrot Greek Yogurt Mixed Grains Pouch Toddler 12+ Months;
- Gerber Garden Veggies & Rice Advanced;
- Gerber Squash Apple Corn Sitter 2nd Foods;
- Gerber Banana Blueberry Rice Pudding Advanced;
- Gerber Strong Pear Sweet Potato Greek Yogurt Oats Cinnamon Pouch Toddler 12+ Months;
- Gerber Pumpkin Banana Sitter 2nd Foods;
- Gerber Strong Broccoli Carrot Banana Pineapple Pouch Toddler 12+ Months;
- Gerber My 1st Veggies Starter Kit Supported Sitter 1st Foods;
- Gerber Organic Sweet Potato Apple Carrot& Cinnamon Sitter 2nd Foods;
- Gerber Organic Banana Supported Sitter 1st Foods;
- Gerber Mango Apple Twist Sitter 2nd Foods;
- Gerber Sweet Potato Mango Pear Kale Pouch Toddler 12+ Months;
- Gerber Organic Apple Kale Fig Sitter 2nd Foods;
- Gerber Organic Carrot Supported Sitter 1st Foods;
- Gerber My 1st Fruits Starter Kit Supported Sitter 1st Foods;
- Gerber Organic Apple Supported Sitter 1st Foods;

- Gerber Organic Apple Mango Brown Rice with Vanilla Pouch Toddler 12+ Months;
- Gerber Fruit & Veggie Favorites Baby Food Variety Pack Tubs Sitter 2nd Foods;
- Gerber Apple Chicken Dinner Sitter 2nd Foods;
- Gerber Organic Apple Peach Pouch Sitter 2nd Foods;
- Gerber Organic Apple Spinach with Kale Sitter 2nd Foods;
- Gerber Apple Mango with Rice Cereal Sitter 2nd Foods;
- Gerber Organic Apple Raspberry Acai Berry Pouch Sitter 2nd Foods;
- Gerber Apple Strawberry Blueberry Mixed Cereal Sitter 2nd Foods;
- Gerber Organic Banana Blueberry Blackberry Oatmeal Pouch Sitter 2nd Foods;
- Gerber Chicken Noodle Dinner Sitter 2nd Foods;
- Gerber Organic Mango Apple Banana Sitter 2nd Foods;
- Gerber Organic Banana Apple Strawberry with Millet Quinoa & Cinnamon Sitter 2nd Foods;
- Gerber Organic Banana Mango Sitter 2nd Foods;
- Gerber Chicken Rice Dinner Sitter 2nd Foods;
- Gerber Organic Banana Squash Pouch Sitter 2nd Foods;
- Gerber Hawaiian Delight Sitter 2nd Foods;
- Gerber Organic Pear Purple Carrot Raspberry Sitter 2nd Foods;

- Gerber Organic Apple Wild Blueberry Sitter 2nd Foods;
- Gerber Organic Banana Strawberry Raspberry Mixed Grain Toddler 12+ Months;
- Gerber Mac & Cheese with Vegetables Dinner Sitter 2nd Foods;
- Gerber Organic Apple Strawberry Beet Sitter 2nd Foods;
- Gerber Organic Mango Apple Carrot Kale Pouch Sitter 2nd Foods;
- Gerber Pea Carrot Spinach Sitter 2nd Foods;
- Gerber Organic Pear Blueberry Apple Avocado Pouch Sitter 2nd Foods;
- Gerber Turkey Rice Dinner Sitter 2nd Foods;
- Gerber Organic Carrot Banana Mango with Millet & Quinoa Sitter 2nd Foods;
- Gerber Organic Pear Spinach Pouch Sitter 2nd Foods;
- Gerber Vanilla Custard Pudding with Banana Sitter 2nd Foods;
- Gerber Organic Carrot Apple Pear Sitter 2nd Foods;
- Gerber Organic Pear Zucchini Mango Sitter 2nd Foods;
- Gerber Vegetable Beef Dinner Sitter 2nd Foods;
- Gerber Organic Pear Supported Sitter 1st Foods;
- Gerber Organic Pumpkin Banana Carrot Pouch Sitter 2nd Foods;
- Gerber Vegetable Chicken Sitter 2nd Foods;
- Gerber Lil' Mixers Vegetable Chicken + Mixed Grain & Carrot Beginner;

- Gerber Lil' Mixers Sweet Potato Turkey + Mixed Grain & Carrot Beginner;
- Gerber Lil' Mixers Apple Avocado + Quinoa Crisp Intermediate;
- Gerber Lil' Mixers Carrot Sweet Potato Pea + Quinoa Crisp Intermediate;
- Organics HappyBABY Organic Squash Chickpeas & Spinach with Avocado oil + sage Pouch;
- Organics HappyBABY Organic Broccoli & Carrots with Olive Oil + Garlic Pouch;
- Organics HappyBABY Organic Sweet Potatos with Olive Oil + Rosemary Pouch;
- Organics HappyBABY Organic Purple Carrots & Cauliflower with Avocado Oil + Oregano Pouch;
- Organics HappyTOT Organic Oatmeal & Sprouted Quinoa with Bananas & Strawberries;
- Organics HappyTOT Organic Oatmeal & Sprouted Quinoa with Apples & Blueberries;
- Organics HappyBABY Organic Pears, Mangos & Spinach Pouch;
- Organics HappyTOT Fiber & Protein Gluten Free Oat Bar Organic Apples & Spinach;
- Organics HappyBABY Apples & Spinach;

- Organics HappyBABY Organic Greek Yogis Blueberry & Purple Carrot;
- Organics HappyBABY Apples, Oats & Cinnamon;
- Organics HappyBABY Organic Rice Cakes Apple;
- Organics HappyBABY Bananas & Strawberries;
- Organics HappyBABY Organic Rice Cakes Blueberry & Beet;
- Organics HappyBABY Bananas & Sweet Potatoes;
- Organics HappyBABY Bananas, Blueberries & Beets;
- Organics HappyBABY Carrots;
- Organics HappyBABY Pears;
- Organics HappyBABY Green Beans;
- Organics HappyBABY Organic Bananas, Beets & Blueberries Pouch;
- Organics HappyBABY Pears & Kale;
- Organics HappyBABY Carrots & Peas;
- Organics HappyBABY Pears, Mangos & Spinach;
- Organics HappyBABY Pears & Prunes;
- Organics HappyBABY Sweet Potatoes;
- Organics HappyBABY Pears, Pineapple & Avocados;
- Organics HappyBABY Organic Pears, Peas & Broccoli Pouch;
- Organics HappyBABY Apples, Mangos & Beets;

- Organics HappyBABY Oats & Quinoa Baby Cereal;
- Organics HappyBABY Organic Apples, Spinach & Kale Pouch;
- Organics HappyTOT Organic Mac & Cheese with Lentil Pasta & Veggie Sauce;
- Organics HappyBABY Organic Creamies Strawberry, Raspberry & Carrot;
- Organics HappyTOT Organic Cheesy Lentils & Quinoa with Cauliflower & Parmesan Sauce;
- Organics HappyBABY Organic Creamies Apple, Spinach, Pea & Kiwi;
- Organics HappyTOT Super Foods Organic Pears, Green Beans, & Peas Pouch;
- Organics HappyTOT Fiber & Protein Organic Pears, Raspberries, Carrots & Butternut Squash Pouch;
- Organics HappyTOT Organic Turkey Bolognese with Lentil Pasta & Vegetable Sauce;
- Organics HappyTOT Super Foods Organics Apples, Sweet Potatoes, Carrots, & Cinnamon Pouch;
- Organics HappyTOT Fiber & Protein Organic Pears, Blueberries & Spinach Pouch;
- Organics HappyTOT Super Foods Gluten Free Oat Bar Organic Blueberries & Oatmeal;

- Organics HappyTOT Super Foods Organic Pears, Mangos & Spinach Pouch;
- Organics HappyTOT Super Foods Organic Apples & Butternut Squash Pouch;
- Organics HappyTOT Super Foods Gluten Free Oat Bar Organic Bananas, Strawberries & Sunflower Butter;
- Organics HappyTOT Super Foods Organic Bananas, Peaches & Mangos Pouch;
- Organics HappyTOT Fiber & Protein Gluten Free Oat Bar Organic Bananas & Carrots Pouch;
- Organics HappyKID Organic Mango & Sweet Potato;
- Organics HappyTOT Fiber & Protein Organic Pears, Kiwi & Kale;
- Organics HappyKID Organic Raspberry & Butternut Squash;
- Organics HappyTOT Fiber & Protein Organic Pears, Peaches, Pumpkin & Apples Pouch;
- Organics HappyTOT Super Foods Organic Apples, Mangos & Kale Pouch;
- Organics HappyBABY Organic Teether Crackers Mango & Pumpkin;
- Organics HappyTOT Super Foods Organic Pears; Beets & Blueberries Pouch;
- Organics HappyKID Organic Apple & Cinnamon;

- Organics HappyBABY Organic Teether Crackers Strawberry & Beet;
- Organics HappyTOT Super Foods Organic Apples, Spinach, Peas & Broccoli Pouch;
- Organics HappyKID Organic Blueberry & Raspberry;
- Organics HappyBABY Organic Stage 1 Infant Formula;
- Organics HappyTOT Super Foods Organic Pears, Bananas, Sweet Potato & Pumpkin Pouch;
- Organics HappyTOT Organic Veggies & Wild Rice with Mushrooms & Parmesan;
- Organics HappyKID Organic Banana & Chocolate;
- Organics HappyTOT Organic Beef & Quinoa Fiesta with Vegetable Salsa;
- Organics HappyBABY Squash, Pears & Apricots Pouch;
- Organics HappyBABY Organic Teethers Pea & Spinach;
- Organics HappyTOT Super Morning Organic Bananas, Blueberries, Yogurt & Oats Pouch;
- Organics HappyBABY Oatmeal Baby Cereal;
- Organics HappyBABY Peas, Bananas & Kiwi Pouch;
- Organics HappyTOT Super Morning Organic Apples, Cinnamon, Yogurt & Oats Pouch;
- Organics HappyBABY Organic Teethers Blueberry & Purple Carrot;

- Organics HappyTOT Super Bellies Immune + Digestive Organic Bananas, Spinach & Blueberries Pouch;
- Organics HappyTOT Super Bellies Immune + Digestive Organic Pears, Beets & Blackberries;
- Organics HappyBABY Organic Teethers Sweet Potato & Banana;
- Organics HappyBABY Mangos Pouch;
- Organics HappyTOT Super Bellies Immune + Digestive Organic Bananas, Carrots & Strawberries Pouch;
- Organics HappyKID Organic Apple, Kale & Mango Pouch;
- Organics HappyBABY Apples, Kale & Oats Pouch;
- Organics HappyBABY Prunes Pouch;
- Organics HappyTOT ABC Multi-Grain Cookies Organic Cinnamon & Sweet Potato + Flaxseed;
- Organics HappyKID Organic Apple, Beet, Strawberry & Kiwi Pouch;
- Organics HappyBABY Apples & Carrots Pouch;
- Organics HappyBABY Green Beans, Spinach & Pears Pouch;
- Organics HappyTOT ABC Multi-Grain Cookies Organic Vanilla & Oat + Flaxseed;
- Organics HappyKID Organic Apple, Blueberry & Pomegranate Pouch;
- Organics HappyBABY Pears, Squash & Oats Pouch;

- Organics HappyTOT Super Smart Organic Bananas, Mangos & Spinach + Coconut Milk Pouch;
- Organics HappyBABY Sweet Potatoes, Mangos & Carrots Pouch;
- Organics HappyTOT Super Morning Dairy Free Organic Bananas, Dragon Fruit, Coconut Milk & Oats Pouch;
- Organics HappyKID Organic Apple, Kale & Blueberry Pouch;
- Organics HappyTOT Super Smart Organic Bananas, Beets & Strawberries Pouch;
- Organics HappyTOT Super Morning Dairy Free Organic Apples, Acai, Coconut Milk & Oats Pouch;
- Organics HappyBABY Carrots, Strawberries & Chickpeas Pouch;
- Organics HappyBABY Nutty Blends Organic Apples with 1tsp Walnut Butter Pouch;
- Organics HappyBABY Purple Carrots, Bananas, Avocados & Quinoa Pouch;
- Organics HappyBABY Nutty Blends Organic Bananas with 1tsp Almond Butter Pouch;
- Organics HappyBABY Organic Harvest Vegetables & Chicken with Quinoa Pouch;
- Organics HappyBABY Superfood Puffs Apple & Broccoli;

- Organics HappyBABY Nutty Blends Organic Bananas with 1tsp Peanut Butter Pouch;
- Organics HappyBABY Bananas, Plums & Granola Pouch;
- Organics HappyBABY Organic Root Vegetables & Turkey with Quinoa Pouch;
- Organics HappyBABY Superfood Puffs Banana & Pumpkin;
- Organics HappyBABY Nutty Blends Organic Pears with 1tsp Cashew Butter Pouch;
- Organics HappyBABY Apples, Sweet Potatoes & Granola Pouch;
- Organics HappyBABY Organic Vegetable & Beef Medley with Quinoa Pouch;
- Organics HappyBABY Superfood Puffs Kale & Spinach;
- Organics HappyBABY Zucchini, Apples, Peas, Quinoa & Basil Pouch;
- Organics HappyBABY Superfood Puffs Sweet Potato & Carrot;
- Organics HappyBABY Organic Stage 2 Infant Formula;
- Organics HappyBABY Apples, Kale & Avocadoes Pouch;
- Organics HappyBABY Organic Stage 1 Baby Formula Sensitive;
- Organics HappyBABY Superfood Puffs Strawberry & Beet;
- Organics HappyBABY Apples, Guavas & Beets Pouch;
- Organics HappyTOT Love My Veggies Organic Carrots, Bananas, Mangos & Sweet Potatoes Pouch;

- Organics HappyBABY Superfood Puffs Purple Carrot & Blueberry;
- Organics HappyBABY Apples, Pumpkin & Carrots Pouch;
- Organics HappyTOT Love My Veggies Organic Bananas, Beets, Squash & Blueberries Pouch;
- Organics HappyBABY Pears, Squash & Blackberries Pouch;
- Organics HappyTOT Love My Veggies Organic Spinach, Apples, Sweet Potatoes & Kiwi Pouch;
- Organics Apples, Blueberries & Oats Pouch;
- Organics HappyTOT Love My Veggies Organic Zucchini, Pears, Chickpeas & Kale Pouch;
- Organics HappyBABY Pears, Kale & Spinach Pouch;
- Organics HappyBABY Bananas, Sweet Potatoes & Papayas Pouch;
- Organics HappyTOT Organic Cheese & Spinach Ravioli with Marina Sauce;
- Organics HAPPYBABY Bananas, Raspberries & Oats Pouch;
- Organics HappyTOT Organic Squash Ravioli with Squash, Pumpkin & Sage Sauce;
- Organics HappyBABY Pears, Zucchini & Peas Pouch;
- Organics Pears, Pumpkin & Passion Fruit Pouch;
- Organics HappyBABY Organic Yogis Strawberry;
- Organics HappyBABY Black Beans, Beets & Bananas Pouch;

- Organics HappyBABY Organic Yogis Mixed Berry Pouch;
- Organics HappyBABY Pears, Pumpkin, Peaches & Granola Pouch;
- Organics HappyBABY Organic Yogis Banana & Mango Pouch;
- Organics HappyBABY Bananas, Pineapple, Avocado & Granola Pouch;
- Organics HappyBABY Organic Greek Yogis Strawberry Banana;
- Organics HappyBABY Apples & Blueberries.

2. Caregivers like Plaintiff trust manufacturers like Defendants to sell food for babies/children that is nutritious, safe, and free from harmful toxins, contaminants, and chemicals. Caregivers certainly expect that the food that they feed their infants and toddlers will be free from heavy metals, harmful toxins, and contaminants.

3. Plaintiff and those similarly situated (“Class Members”) relied on Defendants’ misrepresentations when purchasing the Products. Plaintiff and Class Members paid a premium for the Products based upon their representations. Given that Plaintiff and Class Members paid a premium for the Products based on Defendants’ misrepresentations, Plaintiff and Class Members suffered an injury in the amount of the premium paid.

4. Plaintiff and Class Members did not know that, contrary to the representations on the Products’ labels, the Products contained heavy metals (including arsenic, cadmium, and lead) at levels that are above what is considered safe for babies. As a result, the Products’ labeling is deceptive and misleading.

5. Defendants' conduct violated and continues to violate laws including, but not limited to: Negligent Misrepresentation, California's Consumer Legal Remedies Act, California False Advertising Law, Unfair Competition Law, Breach of Express Warranty, Breach of Implied Warranty, and Unjust Enrichment. Defendants breached and continue to breach their warranties regarding the Products. Defendants have been and continue to be unjustly enriched. Accordingly, Plaintiff brings this action against Defendants on behalf of himself and Class Members who purchased the Products during the applicable statute of limitations period (the "Class Period").

FACTUAL BACKGROUND

6. Consumers lack the scientific knowledge necessary to determine whether the Defendants' products contain heavy metals or to know or ascertain the true nature of the ingredients and quality of the Products. Reasonable consumers therefore must and do rely on Defendants to honestly report what their products contain.

7. Defendants did not list heavy metals as an ingredient on their Products' labels, nor do they warn of the potential presence of heavy metals in their Products.

8. A recent report by the U.S. House of Representatives' Subcommittee on Economic and Consumer Policy, Committee on Oversight and Reform reveals that caregivers' trust has been violated. The Subcommittee's

1 investigation of the seven largest baby food manufacturers in the United States,
2 including Defendants, was spurred by "reports alleging high levels of toxic heavy
3 metals in baby foods" and the knowledge that "[e]ven low levels of exposure
4 can cause serious and often irreversible damage to brain development."

5
6 9. The Subcommittee's report revealed that "[i]nternal company
7 standards permit dangerously high levels of toxic heavy metals, and ... that the
8 manufacturers have often sold foods that exceeded these levels."

9
10 10. The investigation found that, when baby food manufacturers
11 were left to self-regulate and establish their own heavy metals standards,
12 they routinely failed to abide by their own standards.

13
14 11. The Subcommittee also revealed that baby foods are "tainted with
15 significant levels of toxic heavy metals, including arsenic, lead, cadmium, and
16 mercury."

17
18 12. Specific to Gerber, the Subcommittee found the following:

- 19
20 a. Gerber used 67 batches of rice flour that tested over 90 ppb
21 inorganic arsenic - high arsenic ingredients;
22
23 b. Gerber used an ingredient, conventional sweet potatoes, with 48
24 ppb lead. Gerber also used twelve other batches of sweet potato
25 that tested over 20 ppb for lead, the EU's lenient upper standard.
26
27 c. Gerber used multiple batches of carrots containing as much as 87
28 ppb cadmium, and 75% of the carrots Gerber used had more than

1 5 ppb cadmium – the EPA’s drinking water standard;

- 2
- 3 d. Since Gerber’s policy is to only test its ingredients and not its
- 4 final products the Subcommittee states that, that policy
- 5 “recklessly
- 6 endangers babies and children and prevents the companies from
- 7 ever knowing the full extent of the danger presented by their
- 8 products.”
- 9

10 Only testing ingredients gives the mistaken appearance of lower-

11 than-actual toxic heavy metal levels.

12

13 13. Specific to Nurture, the Subcommittee found the following:

14

- 15 a. Nurture (HappyBABY) sold baby foods after tests showed they
- 16 contained as much as 180 parts per billion (ppb) inorganic
- 17 arsenic. Over 25% of the products Nurture tested before sale
- 18 contained over 100 ppb inorganic arsenic. Nurture’s testing
- 19 shows that the typical baby food product it sold contained 60
- 20 ppb inorganic arsenic;
- 21
- 22 b. Nurture (HappyBABY) sold finished baby food products that
- 23 tested as high as 641 ppb lead. Almost 20% of the finished
- 24 baby food products that Nurture tested contained over 10 ppb
- 25 lead;
- 26
- 27 c. Sixty-five percent of Nurture (HappyBABY) finished baby food
- 28

1 products contained more than 5 ppb cadmium;

2 d. Nurture (HappyBABY) sold finished baby food products
3 containing as much as 10 ppb mercury; and
4

5 e. Nurture (HappyBABY) sold all products tested, regardless of
6 how much toxic heavy metal the baby food contained. By
7 company policy, Nurture's toxic heavy metal testing is not
8 intended for consumer safety. The Food and Drug
9 Administration (FDA) has only finalized one standard—100
10 ppb inorganic arsenic in infant rice cereal—and Nurture set its
11 internal standard for that product 15% higher than the FDA
12 limit, at 115 ppb.
13
14
15

16 14. In its conclusion, the Subcommittee stressed the danger
17 associated with the presence of heavy metals in baby food: "These toxic
18 heavy metals pose serious health risks to babies and toddlers.
19 Manufacturers knowingly sell these products to unsuspecting caregivers, in
20 spite of internal company standards and test results, and without any warning
21 labeling whatsoever."
22
23

24 15. Many of Defendants' Products contain labels using words such as
25 organic, HappyTot, and/or HappyBaby to imply to consumers that the products are
26 healthy, Consumers would not pay a premium if they knew that these Products
27 contained any levels of toxic heavy metals.
28

1 16.

2 17. Defendants' deceptive representations and omissions are material in that
3
4 a reasonable person would attach importance to such information and would be
5 induced to act upon such information in making purchase decisions.

6 18. Defendants also know that consumers, such as Plaintiff and the Class,
7
8 are unwilling to purchase baby food that contains elevated levels of toxic heavy
9 metals.

10 19. Defendants each knew that if the elevated levels of toxic heavy metals in
11
12 their respective brands of baby food was disclosed to Plaintiff and Class members,
13
14 then Plaintiff and Class members would be unwilling to purchase the Products.

15 20. Plaintiff and the Class members reasonably relied to their detriment on
16
17 Defendants' misleading representations and omissions.

18 21. Defendants' false, misleading, and deceptive misrepresentations and
19
20 omissions are likely to continue to deceive and mislead reasonable consumers and the
21
22 general public, as they have already deceived and misled Plaintiff and the Class
members.

23 22. As an immediate, direct, and proximate result of Defendants' false,
24
25 misleading, and deceptive representations and omissions, Defendants injured Plaintiff
26
and the Class members in that they:

- 27 a. Paid a sum of money for Products that were not what
28 Defendants represented;

- b. Paid a premium price for Products that were not what Defendants represented;
- c. Were deprived of the benefit of the bargain because the Products they purchased were different from what Defendants warranted;
- d. Were deprived of the benefit of the bargain because the Products they purchased had less value than what Defendants represented;
- e. Ingested a substance that was of a different quality than what Defendants promised; and
- f. Were denied the benefit of the beneficial properties of the foods Defendants promised.

23. Had Defendants not made the false, misleading, and deceptive representations and omissions, Plaintiff and the Class members would not have been willing to pay the same amount for the Products they purchased.

24. Plaintiff and the Class members all paid money for the Products; however, Plaintiff and the Class members did not obtain the full value of the advertised Products due to Defendants' misrepresentations and omissions. Plaintiff and the Class members purchased, purchased more of and/or paid more for the Products than they would have had they known the truth about the Products. Consequently, Plaintiff and the Class members have suffered injury in fact and lost money as a result of Defendants' wrongful conduct.

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1 the Products actually were free of harmful contaminants and heavy metals, Plaintiff
2 would purchase the Products in the immediate future.

3
4 28. Had Defendants not made the false, misleading, and deceptive
5 representations and omissions regarding the Products, Plaintiff would not have been
6 willing to pay the same amount for the Products, and, consequently, would not have
7 been willing to purchase the Products. Plaintiff purchased, purchased more of and/or
8 paid more for the Products than he would have had he known the truth about the
9 Products. The Products Plaintiff received were worth less than the Products for which
10 he paid. Plaintiff was injured in fact and lost money as a result of Defendants'
11 improper conduct.
12
13
14

15 **Defendants**

16 27. Defendant Gerber Products Company (d/b/a Nestlé Nutrition, Nestlé
17 Infant Nutrition, or Nestlé Nutrition North America) is a Michigan corporation with
18 its principal place of business in Virginia. Defendant manufactures, markets,
19 advertises, and distributes the Products throughout the United States. Defendant
20 created and/or authorized the false, misleading, and deceptive advertisements,
21 packaging, and labeling for the Products.
22
23

24 28. Defendant Nurture, Inc. (d/b/a Happy Family Brands and Happy Family
25 Organics) is a Delaware corporation with its principal place of business in White
26 Plains, New York. Defendant manufactures, markets, advertises, and distributes the
27 Products
28

1 throughout the United States. Defendant created and/or authorized the false,
2 misleading, and deceptive advertisements, packaging, and labeling for the Products.
3

4 **CLASS ACTION ALLEGATIONS**

5 29. Plaintiff brings this action individually and on behalf of the following
6 Class pursuant to Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil
7 Procedure:
8

9 All persons within the United States who purchased the Products from the
10 beginning of any applicable limitations period (the “Class”).
11

12 30. Excluded from the Class are the Defendants, any parent companies,
13 subsidiaries, and/or affiliates, officers, directors, legal representatives, employees, co-
14 conspirators, all governmental entities, and any judge, justice, or judicial officer
15 presiding over this matter.
16

17 31. This action is brought and may be properly maintained as a class
18 action. There is a well-defined community of interests in this litigation and the
19 members of the Class are easily ascertainable.
20

21 32. The members in the proposed Class are so numerous that individual
22 joinder of all members is impracticable, and the disposition of the claims of the
23 members of all Classes members in a single action will provide substantial benefits
24 to the parties and Court.
25

26 33. Questions of law and fact common to Plaintiff and the Class include,
27 but are not limited to, the following:
28

- 1 (a) whether Defendants owed a duty of care;
- 2
- 3 (b) whether Defendants knew or should have known that the Products
- 4 contained heavy metals;
- 5
- 6 (c) whether Defendants represented and continue to represent that the
- 7 Products are healthy, nutritious, made from the best ingredients,
- 8 and safe for consumption;
- 9
- 10 (d) whether Defendants represented and continue to represent that the
- 11 manufacturing of their Products is subjected to rigorous quality
- 12 standards;
- 13
- 14 (e) whether Defendants failed to disclose that the Products contained
- 15 heavy metals;
- 16
- 17 (f) whether Defendants' representations in advertising, warranties,
- 18 packaging, and/or labeling are false, deceptive, and misleading;
- 19
- 20 (g) whether those representations are likely to deceive a reasonable
- 21 consumer;
- 22
- 23 (h) whether Defendants had knowledge that those representations were
- 24 false, deceptive, and misleading;
- 25
- 26 (i) whether Defendants continue to disseminate those representations
- 27 despite knowledge that the representations are false, deceptive, and
- 28 misleading;

- 1 (j) whether a representation that a product is healthy, nutritious, made
2 from the best ingredients, and safe for consumption and does not
3 contain heavy metals is material to a reasonable consumer;
4
5 (k) whether Defendants' Marketing of the Products are likely to
6 mislead, deceive, confuse, or confound consumers acting
7 reasonably;
8
9 (l) whether Defendants violated California Business & Professions
10 Code sections 17200, *et seq.*;
11
12 (m) whether Defendants violated California Business & Professions
13 Code sections 17500, *et seq.*;
14
15 (n) whether Defendants violated California Civil Code sections 1750,
16 *et seq.*; and
17
18 (o) whether Plaintiff and the members of the Class are entitled to
19 declaratory and injunctive relief?

20 34. Defendants engaged in a common course of conduct giving rise to the
21 legal rights sought to be enforced by Plaintiff individually and on behalf of the other
22 members of the Class. Identical statutory violations and business practices and
23 harms are involved. Individual questions, if any, are not prevalent in comparison to
24 the numerous common questions that dominate this action.
25
26
27
28

1 35. Plaintiff's claims are typical of those of the members of the Class in
2 that they are based on the same underlying facts, events, and circumstances relating
3 to Defendants' conduct.

4
5 36. Plaintiff will fairly and adequately represent and protect the interests of
6 the Class, has no interests incompatible with the interests of the Class, and has
7 retained counsel competent and experienced in class action, consumer protection,
8 and false advertising litigation.

9
10 37. Class treatment is superior to other options for resolution of the
11 controversy because the relief sought for each member of the Class is small enough
12 that, absent representative litigation, it would be infeasible for members of the Class
13 to redress the wrongs done to them.

14
15 38. Questions of law and fact common to the Class predominate over any
16 questions affecting only individual members of the Class.

17
18 39. As a result of the foregoing, class treatment is appropriate.

19
20 **FIRST CAUSE OF ACTION**
21 **NEGLIGENT MISREPRESENTATION AGAINST DEFENDANTS ON**
22 **BEHALF OF THE CLASS**

23 40. Plaintiff repeats and realleges each and every allegation contained
24 above, as though fully set forth herein.

25
26 41. Plaintiff reasonably relied on Defendants' representations that the
27 Products were as marketed to him and the Class and were safe for consumption, which
28 would include being free from heavy metals.

1 42. Defendants owed a duty to use reasonable care to provide accurate
2 disclosures concerning the presence of heavy metals in the Products, as well as to
3 avoid misleading consumers by omitting the presence of heavy metals.
4

5 43. Defendants breached their duty to Plaintiff and the Class by providing
6 false, misleading, and/or deceptive information about the nature of the Products.
7

8 44. Plaintiff and the Class reasonably and justifiably relied upon the
9 information that Defendants represented to them. Reasonable consumers would
10 have relied on Defendants' own representations regarding the ingredients of the
11 Products.
12

13 45. As a result of these misrepresentations, Plaintiff and the Class paid a
14 premium to purchase the Products.
15

16 46. Defendants failed to use reasonable care in their representations to
17 Plaintiff and the Class, especially when it comes to the ingredients contained in the
18 Products.
19

20 47. Defendants' negligent misrepresentations have damaged Plaintiff and
21 the Class in an amount to be proven at trial or alternatively, seek rescission and
22 disgorgement under this Count.
23

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SECOND CAUSE OF ACTION
VIOLATION OF CALIFORNIA’S CONSUMER LEGAL REMEDIES ACT,
CALIFORNIA CIVIL CODE §§1750, *Et. Seq.*, AGAINST DEFENDANTS ON
BEHALF OF THE CLASS

48. Plaintiff repeats and realleges each and every allegation contained above, as though fully set forth herein.

49. Plaintiff and each proposed Class member is a “consumer,” as that term is defined in California Civil Code section 1761(d).

50. The Products are “goods,” as that term is defined in California Civil Code section 1761(a).

51. Defendants are “persons” as that term is defined in California Civil Code section 1761(c).

52. Plaintiff and each proposed Class member's purchase of Defendants' products constituted a "transaction" as that term is defined in California Civil Code section 1761(e).

53. Defendants' conduct alleged herein violates the following provisions of California's Consumer Legal Remedies Act (the "CLRA"):

(a) California Civil Code section 1770(a)(5), by negligently, recklessly, and/or intentionally representing that the Products are healthy and safe for consumption, and by failing to make any mention of heavy metals in the Products;

1 (b) California Civil Code section 1770(a)(7), by negligently, recklessly,
2 and/or intentionally representing that the Products were of a
3 particular standard, quality, or grade, when they were of another;
4
5 (c) California Civil Code section 1770(a)(9), by negligently, recklessly,
6 and/or intentionally advertising the Products with intent not to sell
7 them as advertised; and
8
9 (d) California Civil Code section 1770(a)(16), by representing that the
10 Products have been supplied in accordance with previous
11 representations when they have not.
12

13 54. As a direct and proximate result of these violations, Plaintiff and the
14 Class have been harmed, and that harm will continue unless Defendants are enjoined
15 from using the misleading marketing described herein in any manner in connection
16 with the advertising and sale of the Products.
17
18

19 55. Plaintiff seeks an award of attorneys' fees pursuant to, *inter alia*,
20 California Civil Code section 1780(e) and California Code of Civil Procedure
21 section 1021.5.
22

23 **THIRD CAUSE OF ACTION**
24 **VIOLATIONS OF CALIFORNIA FALSE ADVERTISING LAW,**
25 **CALIFORNIA BUSINESS & PROFESSIONS CODE §§17500, *Et Seq.*,**
26 **AGAINST DEFENDANTS ON BEHALF OF THE CLASS**

27 56. Plaintiff repeats and realleges each and every allegation contained
28 above, as though fully set forth herein.

1 57. California’s False Advertising Law prohibits any statement in
2 connection with the sale of goods “which is untrue or misleading.” Cal. Bus. & Prof.
3 Code §17500.

4
5 58. As set forth herein, Defendants’ claims that the Products are healthy
6 and safe for consumption are false and likely to deceive the public.

7
8 59. Defendants’ claims that the Products are healthy and safe for
9 consumption are untrue due to the presence of heavy metals in the Products.

10
11 60. Defendants knew, or reasonably should have known, that all these
12 claims were untrue or misleading.

13
14 61. Defendants’ conduct is ongoing and continuing, such that prospective
15 injunctive relief is necessary. Plaintiff would purchase the Products in the future if
16 the Products are healthy, safe for consumption, and do not contain heavy metals.

17
18 62. Plaintiff and members of the Class are entitled to injunctive and equitable
19 relief, and restitution in the amount the purchase price of the Products.

20
21 **FOURTH CAUSE OF ACTION**
22 **VIOLATIONS OF THE UNFAIR COMPETITION LAW, CALIFORNIA**
23 **BUSINESS & PROFESSIONS CODE §§17200, *Et Seq.*, AGAINST**
24 **DEFENDANTS ON BEHALF OF THE CLASS**

25 63. Plaintiff repeats and realleges each and every allegation contained
26 above, as though fully set forth herein.

27 64. The Unfair Competition Law prohibits any “unlawful, unfair, or
28 fraudulent business act or practice.” Cal. Bus. & Prof. Code §17200.

1 65. Defendants' statements that the Products are healthy and safe for
2 consumption are deceptive to the public, as is Defendants' omitting to divulge the
3 existence of heavy metals in the Products.
4

5 66. **Unlawful:** Defendants have advertised the Products using false and/or
6 misleading claims, such that Defendants' actions as alleged herein violate at least
7 the following laws:
8

- 9 • The CLRA, California Business & Professions Code sections 1750, *et seq.*;
10 and
11
12 • The False Advertising Law, California Business & Professions Code
13 sections 17500, *et seq.*
14

15 67. **Fraudulent:** Defendants' statements that the Products are healthy and
16 safe for consumption are deceptive to the public, as is Defendants' omitting to
17 divulge the existence of heavy metals in the Products.
18

19 68. **Unfair:** Defendants' conduct with respect to the labeling, packaging,
20 advertising, marketing, and sale of the Products is unfair because Defendants'
21 conduct was immoral, unethical, unscrupulous, or substantially injurious to
22 consumers and the utility of its conduct, if any, does not outweigh the gravity of the
23 harm to its victims.
24

25 69. Defendants' conduct with respect to the labeling, packaging,
26 advertising, marketing, and sale of the Products is also unfair because it violates
27
28

1 public policy as declared by specific constitutional, statutory, or regulatory
2 provisions, including, but not limited to, the False Advertising Law and the CLRA.
3

4 70. Defendants' conduct with respect to the labeling, packaging,
5 advertising, marketing, and sale of the Products is also unfair because the consumer
6 injury is substantial, not outweighed by benefits to consumers or competition, and
7 not one that consumers, can reasonably avoid.
8

9 71. In accordance with California Business & Professions Code section
10 17203, Plaintiff seeks an order enjoining Defendants from continuing to conduct
11 business through fraudulent or unlawful acts and practices and to commence a
12 corrective advertising campaign. Defendants' conduct is ongoing and continuing,
13 such that prospective injunctive relief is necessary.
14

15 72. On behalf of himself and the Class, Plaintiff also seeks an order for the
16 restitution of all monies from the sales of the Products, which were unjustly
17 acquired through acts of fraudulent, unfair, or unlawful competition.
18

19
20 **FIFTH CAUSE OF ACTION**
21 **BREACH OF EXPRESS WARRANTY, CALIFORNIA COMMERCIAL**
22 **CODE §§2313, AGAINST DEFENDANTS ON BEHALF OF THE CLASS**

23 73. Plaintiff repeats and realleges each and every allegation contained
24 above, as though fully set forth herein.
25

26 74. As set forth herein, Defendants made express representations to
27 Plaintiff and the Class that the Products were healthy and safe for consumption.
28

1 75. These promises became part of the basis of the bargain between the
2 parties and thus constituted express warranties.

3
4 76. There was a sale of goods from Defendants to Plaintiff and the Class
5 members.

6
7 77. On the basis of the express warranty, Defendants sold to Plaintiff and
8 the Class members the Products.

9 78. Defendants knowingly breached the express warranty by including
10 heavy metals in the Products.

11
12 79. Defendants were on notice of this breach as it was aware of the
13 included heavy metals in the Products.

14
15 80. Privity exists because Defendants expressly warranted to Plaintiff and
16 the Class that the Products were healthy and safe for consumption.

17
18 81. Plaintiff and the Class members reasonably relied on the express
19 warranty by Defendants.

20 82. As a result of Defendants' breaches of its express warranty, Plaintiff
21 and the Class suffered damages as they paid money for the Products that were not as
22 Defendants represented.

23
24 83. Plaintiff, on behalf of himself and the Class, seek actual damages for
25 Defendants' breach of warranty.

26
27 ///

28 ///

1 **SIXTH CAUSE OF ACTION**
2 **BREACH OF IMPLIED WARRANTY, CALIFORNIA COMMERICAL**
3 **CODE §2314, AGAINST DEFENDANTS ON BEHALF OF THE CLASS**

4 84. Plaintiff repeats and realleges each and every allegation contained
5 above, as though fully set forth herein.

6 85. Defendants are merchants engaging in the sale of goods to Plaintiff and
7 the Class members.

8 86. There was a sale of goods from Defendants to Plaintiff and the Class
9 members.

10 87. As set forth herein, Defendants marketed the Products to Plaintiff and
11 the Class as healthy and safe for consumption. Defendants did not include heavy
12 metals on their ingredient lists, nor did they provide adequate warning that the
13 Products contain heavy metals.

14 88. The Products did not conform to Defendants' representations as they
15 contained heavy metals at undisclosed and alarming levels.

16 89. These promises became part of the basis of the bargain between the
17 parties and thus constituted implied warranty.

18 90. Defendants breached the implied warranty by selling the Products that
19 failed to conform to the representations, including the ingredient labels, as each
20 product contained heavy metals.

21 91. Defendants were on notice of this breach as it was aware of the
22 inclusion of heavy metals in the Products, and based on the public investigation by

1 the nonprofit organization, Healthy Babies Bright Futures¹, that showed its baby
2 food products as containing heavy metals.

3
4 92. Privity exists because Defendants impliedly warranted to Plaintiff and
5 the Class members through the warranting, packaging, advertising, marketing, and
6 labeling that the Products were healthy and safe for consumption and by failing to
7 warn about the existence of heavy metals.

8
9 93. As a result of Defendants' breach of its implied warranty of
10 merchantability, Plaintiff and the Class sustained damages as they paid money for
11 the Products that were not what Defendants represented.

12
13 94. Plaintiff, on behalf of himself and the Class, seek actual damages for
14 Defendants' breach of warranty.

15
16 **SEVENTH CAUSE OF ACTION**
17 **UNJUST ENRICHMENT AGAINST DEFENDANTS ON BEHALF OF**
18 **CLASSES**

19 95. Plaintiff repeats and reallege each and every allegation contained
20 above, as though fully set forth herein.

21
22 96. Substantial benefits have been conferred on Defendants by Plaintiff and
23 the Class through the purchase of the Products. Defendants knowingly and
24 willingly accepted and enjoyed these benefits.

25
26
27
28 ¹ https://www.healthybabyfood.org/sites/healthybabyfoods.org/files/2020-04/BabyFoodReport_ENGLISH_R6.pdf

1 97. Defendants either knew, or should have known, that the payments
2 rendered by Plaintiff were given and received with the expectation that the Products
3 would have the ingredients and suitability for consumption represented and
4 warranted by Defendants. As such, it would be inequitable for Defendants to retain
5 the benefit of the payments under these circumstances.
6

7
8 98. Defendants' acceptance and retention of these benefits under the
9 circumstances alleged herein make it inequitable for Defendants to retain the
10 benefits without payment of the value to Plaintiff and the Classes.
11

12 99. Plaintiff and the Classes are entitled to recover from Defendants all
13 amounts wrongfully collected and improperly retained by Defendants, plus interest
14 thereon.
15

16 100. Plaintiff and the Classes seek actual damages, injunctive and
17 declaratory relief, attorneys' fees, costs, and any other just and proper relief
18 available under the laws.
19

20 **JURY DEMAND**

21
22 Plaintiff demands a trial by jury on all issues.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for judgment as
25 follows:
26
27
28

1 A. An order declaring this action to be a proper class action, appointing
2 Plaintiff and his counsel to represent the Class, and requiring Defendants to bear the
3 costs of class notice;
4

5 B. An order enjoining Defendants from selling the Products until the
6 higher and/or unsafe levels of heavy metals are removed;
7

8 C. An order enjoining Defendants from selling the Products in any
9 manner suggesting or implying that they are healthy, nutritious, and safe for
10 consumption;
11

12 D. An order requiring Defendants to engage in a corrective advertising
13 campaign and engage in any further necessary affirmative injunctive relief, such as
14 recalling existing products;
15

16 E. An order awarding declaratory relief, and any further retrospective
17 or prospective injunctive relief permitted by law or equity, including enjoining
18 Defendants from continuing the unlawful practices alleged herein, and injunctive
19 relief to remedy Defendants' past conduct;
20

21 F. An order requiring Defendants to pay restitution to restore all funds
22 acquired by means of any act or practice declared by this Court to be an unlawful,
23 unfair, or fraudulent business act or practice, untrue or misleading advertising, or a
24 violation of the Unfair Competition Law, False Advertising Law, or CLRA, plus
25 pre- and post-judgment interest thereon;
26
27
28

1 G. An order requiring Defendants to disgorge or return all monies,
2 revenues, and profits obtained by means of any wrongful or unlawful act or practice;
3

4 H. An order requiring Defendants to pay all actual and statutory
5 damages permitted under the counts alleged herein;
6

7 I. An order requiring Defendants to pay punitive damages on any count
8 so allowable;
9

10 J. An order awarding attorneys' fees and costs to Plaintiff, the Class;
11 and
12

13 K. An order providing for all other such equitable relief as may be just
14 and proper.

15 Date: February 17, 2021

16 **SHOOP | A PROFESSIONAL LAW**
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